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No. 01-958

IN THE

Supreme Court of the United States

CHRIS WOODALL AND COLUMBIA RIVER GORGE COMMISSION,
Petitioners,

v.

SKAMANIA COUNTY,
Respondent.

Petition for a Writ of Certiorari to the Supreme Court of Washington

AMICUS CURIAE BRIEF OF MARK O. HATFIELD AND DANIEL J. EVANS IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

The question presented in this case is whether an interstate compact agency must apply state law over a subject matter where the State has not expressly reserved state law, nor has Congress consented to application of state law.

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BRIEF *AMICUS CURIAE* OF MARK O. HATFIELD AND DANIEL J. EVANS IN SUPPORT OF PETITIONERS

MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF

Senator Mark O. Hatfield (OR, 1966-1997) and Senator Daniel J. Evans (WA, 1983-89) move this Court for leave to file an *amicus curiae* brief in support of the Petitioners in this case. Respondent Skamania County has withheld its consent.

INTEREST OF *AMICI CURIAE* MARK O. HATFIELD AND DANIEL J. EVANS

MARK O. HATFIELD was governor of the State of Oregon from 1959 to 1967. He served as United States Senator from Oregon from 1967 to 1997. Senator Hatfield served as chairman of the Senate Committee on Appropriations from the 97th through 99th Congress, and again during the 104th Congress, and was chairman of the Energy and Water Appropriations Subcommittee. Senator Hatfield was a member of the Senate Energy and Natural Resources Committee. In the 99th Congress he was a prime sponsor of S. 2055, a bill that later became the Columbia River Gorge National Scenic Area Act.

DANIEL J. EVANS was governor of the State of Washington from 1965 to 1977. He served as United States Senator from Washington from 1983 to 1989. Senator Evans served as a member of the Senate Energy and Natural Resources Committee during his tenure as a United States Senator. Senator Evans served as the first Chairman of the Pacific Northwest Electric Power Planning and Conservation Council from 1981 until his appointment to the United States Senate in 1983. In the 99th Congress he was a prime sponsor of S. 2055, a bill that later became the Columbia River Gorge National Scenic Area Act.

Senators Hatfield and Evans submit this Brief in support of the Joint Petition for a Writ of Certiorari filed by Chris Woodall and the Columbia River Gorge Commission. *Amici* Hatfield and Evans believe the decision of the Washington State Court of Appeals misconstrues the Columbia River Gorge National Scenic Area Act. 16 U.S.C. § 544-544p (2000).

INTRODUCTION AND SUMMARY OF ARGUMENT

In 1986 President Reagan signed into law the Columbia River Gorge National Scenic Area Act, Pub. L. 99-663, 100 Stat 4274 (1986), *codified as amended at* 16 U.S.C. §§ 544–544p (2000). Enactment of the Columbia Gorge Scenic Area Act culminated over 50 years of debate about how to manage the Columbia River Gorge to protect its outstanding scenic, recreation and natural resource values. *Amci* Hatfield and Evans were prime sponsors of S. 2055, the bill that ultimately became the Scenic Area Act.

The Columbia Gorge Scenic Area Act provides the consent of Congress for an interstate compact between Oregon and Washington to manage the Columbia River Gorge. The Act establishes the Columbia River Gorge National Scenic Area, and requires the States to provide a single unified management framework for the scenic area. The Columbia River Gorge Commission was created as an interstate agency to implement the Columbia River Gorge Compact.

In *Skamania County v. Woodall,* 16 P.3d 701 (2001), the Washington State Court of Appeals reversed a lower court decision affirming the authority of the Columbia River Gorge Commission to fashion uniform rules relating to nonconforming land uses. The Commission's rules would apply equally to private land uses in "special management areas" in both Oregon and Washington. Instead, the Court ruled that Washington impliedly reserved the right to have its own state laws apply to the Columbia River Gorge Commission, notwithstanding the fact Congress did not explicitly authorize application of state law to the Commission's Scenic Area Management Plan. *Skamania County,* 16 P.3d at 705-07.

The Columbia River Gorge National Scenic Area Act is patterned after the Pacific Northwest Electric Power

Planning and Conservation Act of 1980 (Northwest Power Act). Pub. L. 96-501, 94 Stat 2697 (1980), *codified as amended at* 16 U.S.C. §§ 839–839h (2000). Sponsors of the Columbia River Gorge National Scenic Area Act were familiar with case law interpreting the Northwest Power Act to require that a state must explicitly reserve its laws for them to apply to an interstate compact agency. They were well aware of the fact this rule would apply to the Scenic Area Act as well.

The Columbia River Gorge National Scenic Area Act explicitly allows the states to reserve state procedural laws relating to formation of the Columbia River Gorge Commission, and its substantive laws governing management of fishing and hunting, forest practices and water rights. The Act does not allow states to subject the Columbia River Gorge Commission to state land use laws.

In *Skamania County, supra,* the Washington State Court of Appeals misinterpreted congressional intent as evidenced by several unique characteristics of the Columbia River Gorge National Scenic Area Act. The Columbia River Gorge Compact was intended to expand upon state power in order to create consistent land use laws for the Columbia River Gorge National Scenic Area. Subjecting the Columbia River Gorge Commission to state land use laws would frustrate the purposes of the Columbia River Gorge National Scenic Area Act.

This case involves the interpretation of a compact between two states. This Court has jurisdiction to review a state court proceeding interpreting the compact. The Court should accept review of the State Court of Appeals decision, and issue the requested Writ of Certiorari to the Washington State Supreme Court.

ARGUMENT

A. The Supreme Court Has Jurisdiction To Review A State Court's Interpretation Of The Columbia River National Scenic Area Act.

The Columbia Gorge Scenic Area Act provides the consent of Congress for an interstate compact between Oregon and Washington to manage the Columbia River Gorge National Scenic Area. 16 U.S.C. § 544c(a)(1)(2000). The Scenic Area Act required the states to establish a bi-state agency known as the Columbia River Gorge Commission to develop a comprehensive land use plan to protect the scenic and recreational values in the Columbia River Gorge. *Id.* The statute sets out in great detail the conditions under which consent was given to the interstate compact.[1] Congress has provided a limited waiver of federal supremacy under the Act, and required federal agency consistency with the Columbia River Gorge Commission's Scenic Area Management Plan. 16 U.S.C. § 544l(d)(2000). Thus, the Scenic Area Act provides congressional approval of regional regulation of resource problems in such a manner as to expand the political power of the states. *See New Hampshire v. Maine*, 426 U.S. 363, 369 (1976).

This Court has jurisdiction to review a state court proceeding interpreting the Columbia River Gorge Compact under 28 U.S.C. § 1257. *State ex rel. Dyer v. Sims*, 341 U.S. 22, 26 (1951); *Delaware River Joint Toll Bridge Comm. v. Colburn*, 310 U.S. 419, 427 (1940). The Court should accept review of the State Court of Appeals decision, and issue the requested Writ of Certiorari to the Washington State Supreme Court.

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[1] Congress may consent to an interstate compact in advance of an agreement between states. *Cuyler v. Adams*, 449 U.S. 433, 441 (1981).

B. Columbia River Gorge Commission Was Created As An Interstate Compact Agency.

The Columbia River Gorge National Scenic Area Act represented approval by Congress of an interstate compact between Oregon and Washington. The purpose of the compact was to create a uniform system of laws governing land management in the Columbia River Gorge National Scenic Area. The Act establishes a "partnership between the Federal Government, the States of Oregon and Washington, and numerous local governments within the Columbia River Gorge for the purpose of protecting and enhancing" property and resources within the Gorge. 132 Cong.Rec. 29496 (Oct. 8, 1986) (remarks of Senator Hatfield). The Act accomplishes this goal by creating the Columbia River Gorge National Scenic Area and ratifying an interstate compact between Washington and Oregon which regulates land use and development activities within the Scenic Area. The Columbia River Gorge Compact has been described as an innovative solution to a difficult interstate land preservation problem. *Columbia Gorge United v. Yeutter, 960 F.2d 110, 115 (9th Cir. 1992) cert. denied, 506 U.S. 863 (1992).*

The Columbia River Gorge Commission was created as an interstate compact agency. The Interstate compact has long been a favorite tool for reconciling competing state interests in the Pacific Northwest. In 1915, Oregon and Washington negotiated the Columbia River Fish Compact, which was ratified by Congress in 1918. Act of April 8, 1918, Pub. L. No. 65-123, 40 Stat. 515. Under the Columbia River Fish Compact, Oregon and Washington have established uniform regulations for harvesting Columbia River salmon runs. In 1980, Congress authorized and directed the four Pacific Northwest states to establish the Northwest Power Planning Council and to enter an interstate compact for purposes of developing a regional plan to

manage the Federal Columbia River Power System. Pacific Northwest Electric Power Planning and Conservation Act. Pub. L. No. 96-501. Following directly in this tradition, Congress in 1986 passed the Columbia River Gorge National Scenic Area Act. Pub. L. 99-663.

C. Columbia River Gorge National Scenic Area Act Was Patterned after the Northwest Power Act.

The principal sponsors of Columbia River Gorge National Scenic Area Act were intimately familiar with the Northwest Power Act. Senator Hatfield also was a sponsor of the Northwest Power Act and was chairman of the Appropriation subcommittee with responsibility for funding to implement the Act. Senator Evans served as the first Chairman of the Northwest Power Planning Council.

Columbia River Gorge National Scenic Area Act is patterned after the Northwest Power Act. *See* Goble, "The Compact Clause and Transboundary Problems: A Federal Remedy for the Disease Most Incident to a Federal Government," 17 Envtl. L. 785, 795 (1987). The Northwest Power Act gives Congressional consent to formation by the Pacific Northwest states of an interstate compact creating the Northwest Power Planning Council. 16 U.S.C. § 839b(a)(2).[2] Similarly, the Scenic Area Act gives Congressional consent to formation by Oregon and Washington of an

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[2]An earlier version of the Northwest Power Act, S. 885, apparently would have established the Council as a federal agency. S. 885 called for the establishment of a five-member council: one member each appointed by the Governor of each Northwest state, the fifth member being the BPA Administrator. S. 885, sec. (4)(a) reprinted in S. Rept. 272, 96th Cong. 1st Sess. At 3 (1979). S. 885 would have required compensation for Council members by the BPA. S. 885, sec. (4)(c).

interstate compact creating the Columbia River Gorge Commission. 16 U.S.C. § 544c(a)(1). The Northwest Power Act allows each Northwest state, subject to its own laws, to appoint two members to the Council. 16 U.S.C. § 839b(a)(2)(B). The National Scenic Area Act allows each state, again subject to its own laws, to appoint six members to the Columbia River Gorge Commission. 16 U.S.C. § 544c(a)(1)(C).

The Northwest Power Act explicitly states the Council is to be considered "a regional agency" and "shall not be considered an agency or instrumentality of the United States for the purpose of any Federal law." 16 U.S.C. § 839b(a)(2)(A). In nearly identical language, the Scenic Area Act declares the Commission to be a "a regional agency" and "shall not be considered an agency or instrumentality of the United States for the purpose of any Federal law." 16 U.S.C. § 544c(a)(1)(A).

The Northwest Power Act states that "members and officers and employees of the Council shall not be deemed to be officers and employees of the United States for any purpose." 16 U.S.C. § 839b(a)(3). The Northwest Power Act directs that compensation of members be fixed by State law. Id. Finally, the Act disclaims any responsibility of the United States for any contract or other obligations of the Council. 16 U.S.C. § 839b(a)(4). The National Scenic Area Act contains identical provisions with regard to the Columbia River Gorge Commission. 16 U.S.C. § 544c(b).

The similarities between the Northwest Power Act and the Columbia River Gorge National Scenic Area Act were intentional. Four years prior to enactment of the Northwest Power Act, this Court decided *Buckley v. Valeo*, 424 U.S. 1 (1976). In *Buckley*, the Court ruled that "any appointee exercising significant authority pursuant to the laws of the United States is an 'Officer of the United States' and must, therefore, be appointed" by the President. *Buckley, 424 U.S.*

at 126. At the time Northwest Power Act and the Columbia River Gorge National Scenic Area Act were drafted, the question of applicability of the Appointments Clause to an interstate compact agency were very much an open question.

The Northwest Power Act's sponsors were concerned about the appropriate balance between state and federal interests. See e.g., 126 Cong.Rec. 30181 (1980) (remarks of Sen. McClure) ("The Pacific Northwest does not need and candidly will not suffer lightly a federally imposed regional planning process with apparent input from Washington acting as a federal agency."); *See also* 126 Cong.Rec. 30181 (1980) (remarks of Sen. Hatfield). At the same time, the Northwest Power Act was drafted in such a manner as to avoid the potential constitutional problems of a federal agency composed of state appointees. H.R.Rep. No. 96-976 (Part II), 96th Cong., 2d Sess. 40-41 (majority views), 70-71 (supplemental views of Rep. Williams)(1980). Those who participated in the enactment of the Columbia River Gorge National Scenic Area Act held similar views. When it passed the Columbia Gorge Scenic Area Act, Congress very clearly was attempting to delegate resolution of what it saw as regional concerns to a state-created body, and to avoid to the extent possible usurping what were seen as traditional state prerogatives in favor of direct federal control. See e. g., 132 Cong. Rec. S15645-49 (Daily ed. Oct. 8, 1986) (colloquy between Senators Evans, Hatfield, McClure, Gorton and Wallop).

D. Sponsors Of The Columbia Gorge National Scenic Area Act Were Familiar With Case Law To The Effect That A State Must Explicitly Reserve Its Laws For Them To Apply To An Interstate Compact Agency.

Congress is presumed to be familiar with case law. *Miles v. Apex Marine Corporation*, 498 U.S. 19, 32 (1990) ("When Congress passed the Jones Act, the [*Michigan Central R. Co. v.*] *Vreeland* gloss on FELA, and the hoary tradition behind it, were well established."). Sponsors of the Columbia River Gorge National Scenic Area Act were intimately familiar with litigation concerning the Northwest Power Act. In particular, the sponsors were familiar with *Seattle Master Builders Ass'n v. Pacific Northwest Elec. Power and Cons. Planning Council*, 786 F.2d 1359 (9th Cir. 1986), *cert. denied*, 479 U.S. 1059 (1987).

In *Seattle Master Builders*, the Ninth Circuit Court of Appeals ruled that a State must reserve its laws for them to apply to the Northwest Power Planning Council, an interstate compact agency. The Ninth Circuit heard oral argument in the *Seattle Master Builders* case on May 9, 1985. The Court decided the *Seattle Master Builders* case on April 10, 1986, and the Court's amended opinion was published on June 11, 1986. Senators Evans, Gorton, Hatfield and Packwood introduced S. 2055 on February 6, 1986.[3] A final version of the bill was prepared in the late spring of 1986, and the bill reported by the Senate Energy and Natural Resources Committee on August 14, 1986. On October 8, 1986, *Amici* Hatfield and Evans offered a substitute amendment to S. 2055 on the Senate floor, which was

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[3] S. 2055, 99th Cong., 2nd Sess., introduced at 132 CONG. REC. S1146 (daily ed. Feb. 6, 1986), text at 132 CONG. REC. S1148-55.

adopted by the Senate on final passage of the Scenic Area Act. Drafting by the Senators of the final version of the National Scenic Area Act, and a decision by the Ninth Circuit of the *Seattle Master Builders* case, essentially were contemporaneous events.

In this particular instance, the sponsors of S. 2055 also were personally familiar with the *Seattle Master Builders* case. At issue in that case was the application of model conservation standards. Senator Evans served as Council chairman when the standards were adopted. Evans received a thorough briefing on the case as early as 1984. *See* Memorandum to Senator Daniel J. Evans from Joe Mentor, Jr., Legislative Counsel to Senator Evans (December 26, 1984) (on file in the Washington State Archives). Senator Hatfield was chairman of the Energy and Water Appropriations Subcommittee of the Senate Appropriations Committee, the subcommittee overseeing funding for implementation of the Northwest Power Act.

Their familiarity with *Seattle Master Builders* meant the sponsors of S. 2055 were well aware of the Ninth Circuit's ruling that a compact must explicitly reserve state laws for them to apply to constrain an interstate compact agency. The Columbia Gorge Scenic Area Act explicitly required the States to adopt the Act as part of compact enabling legislation. Consequently, the sponsors were aware of the fact that omitting state land use laws from section 17 of the Scenic Area Act meant the States were prevented from reserving their land use laws for the Commission to apply.

E. The Columbia Gorge Scenic Area Act Explicitly Allows The States To Reserve State Procedural Laws Relating to Formation of the Columbia River Gorge Commission, And Substantive Laws Governing Management Of Fishing And Hunting, Forest Practices, And Water Rights. The Act Does Not Allow States To Subject The Columbia River Gorge Commission To State Land Use Laws.

In the Columbia River Gorge National Scenic Area Act, Congress gave its consent in advance to the Columbia River Gorge Compact. The Act expressly reserved state laws governing administrative procedures, water rights, and management of fishing, hunting and forest practices on private lands. 16 U.S.C. 544(o). Congress did not authorize, nor did the states explicitly reserve, each state's land use laws. The fact that a contrary result was intended is clear from the reservation of other laws. The omission of a reservation of state land use laws from section 17 of the Scenic Area Act was intentional. The context of this provision, i.e., reserving certain state laws from a scheme intended to provide consistency between applicable land use laws, lends itself to application of the canon of statutory interpretation that the mention of some implies the exclusion of others not mentioned. *Compare Dole v. Dominion Industries, Inc.*, *United States*, 532 U.S. [illegible] (2001) (Soundness of premise that expression of one thing implies exclusion of others is a function of timing); *Smith v. United States*, 511 U.S. 485 (1994) (Souter, J., dissenting) (Application of canon depends largely on context.).

F. The Washington State Court of Appeals has Misinterpreted Congressional Intent as Evidenced by Several Unique Characteristics of the Columbia River Gorge National Scenic Area Act

The Washington Court of Appeals wrongly attributes the intent of Congress to a number of unique features of the Columbia River Gorge National Scenic Area Act. *Amici* were prime sponsors of the bill that ultimately became the Columbia Gorge National Scenic Area Act. They will respond below to each of the factors in the order discussed by the Washington State Court of Appeals.

> "First, Congress's decision not to make the Commission a federal agency suggests it wanted the Commission to apply state law. Had Congress wanted the Commission to apply federal law, it could have made the Commission a federal agency." *Skamania County, 16 P.3d at 705-06.*

Like the Northwest Power Act, the Scenic Area Act provides, "The Commission ... shall not be considered an agency or instrumentality of the United States for the purpose of any Federal law[.]" 16 U.S.C. § 544c(a)(1)(A). At every opportunity, Congress took great pains to ensure that the Commission would function as an interstate compact agency, not as a federal agency. That is because the sponsors of the bill wanted to ensure the Scenic Area land use guidelines would be developed by representatives of state and local governments whose land was most directly affected by establishment of the National Scenic Area. They were concerned above all about avoiding a *Buckley v. Valeo* problem, and so they took great pains to clearly establish the Columbia River Gorge Commission as an interstate compact agency. They also were concerned about the risks

and controversy inherent in imposing "federal zoning" over the Scenic Area. So they ensured the law required the States to provide the Commission with authority under state law - not federal law -- to develop uniform, consistent land use standards.

> "Second, Congress's decision to give state courts almost exclusive jurisdiction over appeals from Commission action suggests Congress intended the Commission to apply state law. Had Congress wanted the Commission to apply federal law, it would have placed appeals from the Commission primarily in the federal courts." *Skamania Cy., 16 P.3d at 706.*

The judicial review provisions of the Act do not reflect in any way on the question whether Congress allowed the Commission to fashion its own land use rules. Instead, they carefully reflect the partnership between the states and the federal government. Under section 15 of the Scenic Area Act, the state courts have jurisdiction over appeals of enforcement decisions by the Secretary of Agriculture. 16 U.S.C. § 544p(5). The state courts have jurisdiction to hear appeals of enforcement and implementation decisions. 16 U.S.C. § 544p(6).

> "Third, the legislative history suggests Congress did not want the Commission applying federal law to a zoning case like this. The backers of the Act made specific changes to address President Reagan's concerns that the Act would amount to federal zoning laws. A substantial amount of the Commission's work is zoning. If courts were to review Commission actions under federal law, this would raise the specter of federal zoning. Moreover, "[t]here is . . . No federal law of zoning," so it is unclear what courts would apply." *Skamania Cy., 16 P.3d at 706* (citations omitted).

The legislative history of the Scenic Area Act is replete with references to the ongoing dialogue that took place between the drafters of S. 2055 and the Reagan Administration. *See e.g.*, Letter from George S. Dunlop, Assistant Secretary, U.S. Department of Agriculture, to Senator Slade Gorton, *reprinted in* 132 Cong. Rec. S 15628 (Daily ed. Oct. 8, 1986). The discussions between Congress and the Administration over the subject of "federal zoning" lead to a clear separation between the roles of the Commission and the Secretary of Agriculture. This separation, however, has little or no relevance when considering whether the Commission, or any other interstate compact agency, is free to fashion its own rules of law in an area where the Commission is specifically formed to develop uniform rules of law.

> "Fourth, Congress's approval of the Compact suggests it wanted the Commission to apply state law. Congress approved the Compact, knowing it expressly provided that 'the provisions of [the Columbia River Gorge Compact] hereby are declared to be the law of this state.'" *Skamania Cy., 16 P.3d at 706.*

This statement truly is perplexing. Of course the Washington Legislature declared the Columbia River Gorge Compact to be the law of Washington State. That means the Compact is incorporated into Washington state law, not *vice versa*. It would be illogical to suggest otherwise since the Compact plainly preempts certain state prerogatives.

> "Fifth, Congress's decision not to dictate that federal law apply suggests it intended the Commission to apply state law. When Congress placed urisdiction almost exclusively in the state courts, it did not command the state courts to apply federal law. Congress had to know that absent such a command, Washington state courts are required to

apply Washington state common law." *Skamania Cy., 16 P.3d at 706.*

The Court of Appeals based its ruling in this regard on RCW 4.04.010, which dates back to the days of the Washington Territory. Wash. Territory Laws 1862, p. 83, § 1. The state statute reads as follows:

> "The common law, so far as it is not inconsistent with the Constitution and laws of the United States, or of the state of Washington nor incompatible with the institutions and condition of society in this state, shall be the rule of decision in all the courts of this state." RCW 4.04.010 (2001).

The fact the State of Washington adopted the common law at statehood is unconvincing. Every state except perhaps Louisiana adopted the common law. *See* L. Friedman, History of American Law 96, 318 (1973). According to the Washington Supreme Court, RCW 4.04.010 "refers to the unwritten law of England, as administered by its courts, and also its modifying general statutes in force at time of our Declaration of Independence." *Garrett v. Byerly,* 284 P. 343, 354 (1930). In no way should this statute be read to preclude the Congress from requiring Oregon and Washington to provide the Commission with authority to develop uniform land use standards that apply equally in both states.

> "Sixth, the Management plan suggests the Commission thought Congress had at least allowed it to apply state common law in cases involving vested rights." *Skamania Cy., 16 P.3d at 707.*

True enough, the Scenic Area Act is flexible enough to allow the Commission to fashion its own rules, consistent with guidelines contained in the Scenic Area Act and subject to approval by the Secretary of Agriculture. That does not mean the Commission is forced to use state

vesting laws or other substantive state rules. This Act and the Compact represent a contract between the states and federal government under which they share responsibilities to manage the Columbia Gorge National Scenic Area. The Commission is not a federal agency, rather, the Commission derives its authority from state law, but is not bound by the rules or precedents of any one state when developing its management plan.

G. The Columbia River Gorge Compact Was Intended To Expand Upon State Power In Order To Create Consistent Land Use Laws for the Columbia River Gorge National Scenic Area.

An agreement between states that does not expand state authority does not require Congressional approval. *Cuyler v. Adams*, 449 U.S. 433, 440 (1981). Consequently, the states didn't need an Act of Congress if the only purpose was to establish a Commission with no power to impose consistent land use standards. In fact, in the 1950s, the states created separate Gorge Commissions with advisory roles, which adopted parallel advisory plans in 1976. *See e. g.* Washington Columbia River Gorge Comm'n, *A Resource Management Program for the Columbia Gorge, State of Washington* (1976) and Oregon Columbia River Gorge Comm'n, *A Resource Management Program for the Columbia Gorge, State of Oregon* (1976). The Bi-State Columbia River Gorge Commission failed to develop a cohesive management plan for what became the Columbia River Gorge National Scenic Area. During debate in the House of Representatives on the Scenic Area Act, Congressman Sid Morrison (R-WA), explained that, despite the existence of the old Gorge Commissions, there were differences in land use regulation in the two states, "and obviously those differences exist or we probably would not have this legislation in front of us today." 132 Cong. Rec. 32197 (1986)(remarks of Rep. Morrison).

H. Subjecting the Columbia River Gorge Commission to State Land Use Laws Would Frustrate the Purposes of the Columbia River Gorge National Scenic Area Act.

A stated purpose of the National Scenic Area Act was "to establish a national scenic area to protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge." 16 U.S.C. § 544a. During Senate debate on S. 2055, the sponsors of the bill explained how they intended for the Scenic Area Act to accomplish this purpose. According to Senator Hatfield,

> "The Columbia Gorge will be managed as a single geographical unit, and this management scheme will reflect the area's economic, environmental, social, geologic, cultural, and recreational diversity. Under this arrangement, three distinct management classifications will be established. [One of the classifications includes] ... four special management areas (SMAs), containing lands of exceptional scenic, cultural, natural, and recreational values suitable for special Federal supervision." 132 Cong. Rec. S15636 (Daily ed. Oct. 8, 1986).

Senator Evans explained the bill as follows:

> "Under S. 2055, a dual approach will be used to develop a single management strategy. The bill gives congressional consent to an interstate compact between Oregon and Washington to create the Columbia Gorge Commission. The Commission will have primary responsibility for planning for the Columbia Gorge National Scenic Area. The Commission will develop a comprehensive management plan for the national scenic area, in accordance with the guidelines set forth in the

> legislation. The bill also gives the U.S. Forest Service a role in the management of approximately 112,000 acres of land [in the special management areas] with outstanding scenic, cultural, recreational, and natural resource value. Together they will result in a unified strategy for land management.
>
> There are a diverse and sometimes competing array of interests in the gorge. Some are national in scope, some regional, some State and some local. Members of the Commission will be appointed by the Governors of Oregon and Washington and will develop a management plan which balances the local, State, and regional interests. The national interest is protected through the guidelines of the Federal legislation and the involvement of the Forest Service in management of truly special areas. Of course, no legislation to establish a national scenic area in the Columbia Gorge would be successful without the active participation and support of local governments. Consequently, the bill relies on counties to develop implementation measures to effectuate the land management plan." 132 Cong. Rec. S15639 (Daily ed. Oct. 8, 1986).

It is clear from the legislative history that Congress intended for the Commission to develop a comprehensive management plan for the National Scenic Area, under federal supervision. It is clear from the Senate debates that, as a condition to approval of the Columbia River Gorge Compact, Congress intended for the States to provide the Commission with authority to develop land use guidelines of general applicability in Special Management Areas in both Oregon and Washington. Requiring the Commission to apply Washington land use law on one side of the river, and Oregon law on the other side, would defeat the purpose of the Act that gives rise to the compact. It is well-settled doctrine of this Court to read a statute, assuming

that it is susceptible of either of two opposed interpretations, in a manner that effectuates rather than frustrates the major purpose of the legislative drafters. *Shapiro v. United States*, 335 U.S. 1, 31 (1948). As this Court has previously stated, "It is not for us to so construe the Acts as to frustrate this clear-cut purpose so forcefully expressed by both friend and foe of the legislation at the time of its adoption." *First Nat. Bank of Logan, Utah v. Walker Bank & Trust Co.* 385 U.S. 252, 261 (1966).

CONCLUSION

Subjecting compact agencies to state law in the very subject area where Congress intended compact approval to apply would leave the compact agency with no more power than the states already had before the Act was passed. This result would eviscerate the Compact Clause as a mechanism to provide creative solutions to regional problems. This is not what Congress intended when it passed the Columbia River Gorge National Scenic Area Act. This should not be the result this Court allows today.

This case presents a substantial question of federal law. The Supreme Court should provide review of the case and determine whether, as a matter of federal law, an interstate compact agency must apply state law over a subject matter where the State has not expressly reserved state law, nor has Congress consented to application of state law.

Respectfully submitted,

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